

No. 2945

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

In re QUAN YOU, otherwise known as
LOW JUNE, on Habeas Corpus,
Appellant,

vs.

EDWARD WHITE, as Commissioner,
etc.

Appellee.

GOVERNMENT'S REPLY BRIEF

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STATEMENT OF THE CASE.

The defendant in this case is a citizen of China, and a person of the Chinese race. He was arrested under warrant of July 21st 1916 on the grounds that he was subject to be taken into custody and returned to the country whence he came under section 21 of the Immigration Act approved February 20th, 1907, being subject to deportation under the provisions of the laws of the United States, to wit, the Chinese Exclusion laws for the following, among other, reasons: That he was

found within the United States in violation of section 6 of the Chinese Exclusion Act of May 5th, 1892 as amended by the Act of November 3rd, 1893, being a Chinese laborer not in possession of his certificate of residence, and that he has been found within the United States in violation of section 2 of the Chinese Exclusion Act of November 3rd 1893, having secured admission by fraud, the said defendant not having been, at the time of his entry, a lawfully domiciled exempt returning merchant.

The defendant departed the United States for China on June 28th 1912, and prior to his departure he made an application for a merchant's return certificate, form 431. In order to obtain this, it was necessary for him to establish the fact that he was a merchant and that he had been such merchant for upwards of one year prior to his departure.

This fact was established to the satisfaction of the Immigration officials prior to the departure of the said defendant. The defendant went to China, and returned May 11th 1914, at which time he presented the return certificate which he had obtained prior to his departure, and which indicated that he was entitled to return as a merchant.

After entering the United States, this defendant was arrested upon the ground that he had re-entered the United States through fraud, inasmuch as he had fraudulently obtained his merchant's certificate, the evidence presented at the time of the hearing indicating that at the time defendant claimed to be

a merchant, he was in fact engaged in the laundry business.

ASSIGNMENTS OF ERROR.

The appellant assigns the following reasons for a reversal of the ruling of the lower court, namely:

1. "That the appellant is a Chinese alien, and if illegally here, is entitled to have that fact determined by the Judicial Branch of the Government, and the Secretary of Labor is without jurisdiction in the premises.

2. That the Executive hearing was unfair, the defendant not being notified of his right to inspect the record, or being informed of the evidence presented against him, or of his right to be present at any future hearings to be had, and being prevented by the inadequacy of his arraignment from knowing how he could be benefited by having counsel to defend him."

There have been so many well-defined decisions by the Court of this Circuit, as well as the courts of other Circuits of the United States, that it seems useless for the Government to dwell long upon the first contention of appellant. The following cases are ample authority for giving the Secretary of Labor jurisdiction in determining such cases as the one now before the Court:

Ex parte Owe Sam Goon, 235 Fed. 847 (C. C. A. 9th)

Wong Bock Sue vs. Connell, 233 Fed. 659 (C. C. A. 9th)

Sibray vs. U. S. 227 Fed. 1 (C. C. A. 3rd)

U. S. vs. Sisson, 232 Fed. 598 (C. C. A. 2nd)

Moy Wing Sun vs. Prentis, 234 Fed. 24 (C. C. A. 7th)

Lo Pong vs. Dunn, 235 Fed. 510 (C. C. A. 8th)

Ex parte Lam Pui, 217 Fed. 456 (D. C.)

U. S. vs. Sisson, 222 Fed. 693 (D. C.)

Ex parte Lee Ying, 225 Fed. 335 (D. C.)

Ex parte Woo Shing, 226 Fed. 141 (D. C.)

Ex parte Chun Woi San, 230 Fed. 538 (D. C.)

(In this last case (*Chun Woi San*), Judge Dooling said he had denied authority of Secretary in *Wong Tuey Hing*,—cited by McGowan in his brief—because his attention had not been called to section 21 of the Immigration Act.)

In reply to the second contention concerning the unfairness of the hearing, the Government desires to call the attention of the Court to the fact that this case was presented in the same manner that practically every immigration case is presented that comes before the Department. In the first place, the defendant was arrested upon a warrant, the warrant was read to the defendant and fully explained, as is shown on page 30 of the Original Record of the Bureau of Immigration now on file and marked Respondent's Exhibit "A".

The arraignment of the defendant, which is fully shown on page 20 of the said record of the Bureau

of Immigration, shows conclusively the fairness on the part of the Immigration officials in the conduct of this case. The portion of the arraignment to which the Court's attention is directed, is as follows:

“Q. You stated at San Francisco that after the store was closed in K. S. 26 you became a laundryman at Tuscaloosa, Ala. Is that correct? A. Yes, I remember it just as you mentioned it,—if you had not mentioned it I would not have remembered.

Q. What year was that? A. I don't remember.

Q. Where was your laundry located at Tuscaloosa? A. No. 2210 Broad St.

Q. How long did you run that laundry there? A. I don't remember very well, but five or six years.

Q. When did you give up that laundry business at No. 2210 Broad St., Tuscaloosa, Ala.? A. About 1907 or 1908.

Q. What was the name of that Laundry? A. I don't remember.

Q. You remember a while ago and said it was the Loo June laundry? A. Yes, as you mention it I remember.

Q. By what name were you known in Tuscaloosa during those 5 or 6 years you were there. A. I was known by the name that was on the Laundry, Loo June.

Q. Who did you have working for you at that time? A. I had two colored women.

Q. What were their names? A. One was Lunie.

Q. What was her other name? A. King.

Q. King or Dunn? A. I knew her by the name of King.

Q. Was she a little woman or a big woman? A. Big woman.

Q. How long did she work for you? A. 4 or 5 years.

Q. You say you were known in Tuscaloosa by the name of Loo June? A. Yes.

Q. When did you leave Tuscaloosa? A. I think in 1908.

Q. Did you go back there at any time after that? A. No, I went to San Francisco and joined Hing Kee & Co. store.

Q. Who did you rent the building from in which your laundry was located in Tuscaloosa? A. Mr. Moody, he is the boss of the First National Bank.

Q. I can produce a witness who will testify that you left Tuscaloosa in the early part of 1912 for San Francisco with the intention of going to China? A. No, I went to China from Hing Kee & Co. store.

Q. Do you deny that you were in Tuscaloosa in the early part of 1912 running the Loo June laundry? A. No, I was not in that place in 1912.

Q. This hearing is granted you in order that you may show cause why you should not be deported to the country whence you came in conformity with law. Is there anything further you wish to say as to why you should not be deported? A. How can you deport me to China when I am not a laborer—I just came here to collect money for the firm of Hing Kee & Co., and I have a certificate that I am a merchant.

Q. Yes, you have a certificate that you were admitted as a merchant, but I have found you doing laundry work,—laboring? A. Yes, but I am not working for myself, I was just helping—the laundry does not belong to me.

Q. Is there anything further you wish to say as to why you should not be deported? A. No.

Q. Under the terms of the warrant upon which you have been arrested, you may be released upon giving a bond in the sum of \$1,000. Are you in a position to give that bond? A. I have two friends in Birmingham who can go my bond.

Q. You have a right to be represented by a lawyer at this hearing if you so desire. Do you wish to employ one to represent you? A. No.”

It will be seen from the foregoing that the defendant's attention was called to the fact that the Immigration officials were familiar with his having conducted a laundry at Tuscaloosa during the same

period that said defendant claimed to have been a merchant prior to his departure to China.

It further appears in said arraignment that the defendant's attention was sufficiently called to the fact that the Immigration officials were in possession of, and would in fact introduce in evidence in support of the warrant of deportation, the testimony of defendant's employees who worked for him in said Tuscaloosa laundry during the same period that the said defendant claimed to have been a merchant.

It is true that the defendant was not present at any hearings subsequent to the arraignment, but the mere fact that he stated that he did not desire an attorney, and his attention was directed to the testimony on which the Immigration officials based their decision, is sufficient to show a lack of any unfairness.

The Government calls attention to the testimony of Lunie Dunn referred to by the Immigration officials in the arraignment of said defendant which proves beyond question the fact that the defendant was not a merchant during the period that he claimed to be a merchant prior to his departure for China, but was in fact engaged in the laundry business. This testimony is as follows:

Q. What is your name? A. Lunie Dunn.

Q. Where do you live? A. 15th Street next door to Mr. Mack Malone, West End, Tuscaloosa, Ala.

Q. What is your occupation? A. I am charwoman United States Post Office Building.

Q. I show you a photograph (photograph attached to 'Application and Receipt for Certificate of Identity', San Francisco record No. 13406/16-5) and will ask you if you recognize the same as being of any one you know? A. Yes, this is certainly Loo June.

Q. How long have you known Loo June? A. I have known him about ten years.

Q. While he was in Tuscaloosa? A. Yes sir.

Q. What did he do while here? A. He worked in a laundry.

Q. His own laundry? A. Yes, sir, he bought it out from old man Lee Loy.

Q. Where was his laundry located? A. No. 2210 Broad Street, Tuscaloosa, Ala.

Q. Was he a laundryman all the time you knew him? A. Yes sir.

Q. Do you remember when he first came to Tuscaloosa? A. I don't remember what year.

Q. Do you know where he came from? A. Yes sir, he came from Marion, Ala.—that is what he told me; he told me he had a laundry there for six years.

Q. Was Loo June a Chinaman? A. Yes sir.

Q. When did he leave Tuscaloosa? A. 1912.

Q. How do you know that? A. I was operated on in March at the Williamson & Falks

Infirmery, and Loo June could not leave then until I got well, because his brother could not speak plain English, and he wanted me to stay there and help him out and teach him. I was in the Infirmery one week and stayed home five weeks, and then I went back to work for Loo June again and worked for him until I came over here two years ago last April.

Q. Did Loo June leave after you returned to work? A. Yes sir, the next day.

Q. Do you know where he went to? A. California, and from there to China.

Q. That would make it about May that he left here then? A. Yes sir.

Q. May, 1912? A. Yes sir.

Q. Do you know whether he went to China or not? A. Yes, his brother got letters from him in China all the while, in which he sent regards to me and my daughter. His father had sent for him to come to San Francisco on account of some property, but on account of my illness and his delay in leaving, his father departed for China before Loo June got to California, as he wanted to die there, and Loo June went on to China, and he wrote a letter back to his brother, Loo Wee, that while he was on his way to China his father had died in China. That letter affected Loo Wee so much that he nearly lost his mind, and he would lose the customers' clothes.

Q. When did Loo June return to the United States? A. I don't know positively, but it was

three or four months after I commenced to work here in the Post Office in 1914.

Q. I show you another picture of Loo June (photograph attached to form 431 in San Francisco record No. 13406/16-5) and ask you if you recognize the same? A. Yes sir, that is also Loo June, I know him,—I was there long enough to know him.

Q. Do you know whether he was known by any other name? A. No sir, that was the name he brought here and the one by which he was known in Tuscaloosa.

Q. There is no doubt as to that photograph being Loo June, is there? A. No sir.

Q. And he was a laundryman all the time he was in Tuscaloosa up to the time he left about May, 1912, for China? A. Yes sir."

A review of the memorandum prepared for the Secretary, which appears upon pages 36 to 38 of the said Record of the Bureau of Immigration, will show at once all of the facts considered by the Secretary of Labor in the determination of this case, and the Government calls attention to these pages rather than to set forth more fully the testimony upon which the decision of the said Secretary was based.

It is well established that unless the proceedings of the Immigration Bureau were manifestly unfair and were such as to prevent a fair investigation, its determination will not be disturbed, and in support

of this proposition the Government calls attention to the same decisions set forth by the appellant in his brief and to the following case of

Tang Tun vs. Edsell, 223 U. S. 673.

The findings of the Secretary of Labor are final and conclusive unless there is a showing that there was an unfairness.

Ekiu vs. U. S. 142 U. S. 651

Lee Lung vs. Patterson, 186 U. S. 170

The Japanese Immigrant case, 189 U. S. 86

Tang Tun vs. Edsell, 223 U. S. 673

Low Wah Suey vs. Backus, 225 U. S. 460

U. S. vs. Ju Toy, 198 U. S. 253

Zakonaite vs. Wolf, 226 U. S. 272

Chin Yow vs. U. S. 208 U. S., 8

Healy vs. Backus, 221 Fed. 358.

The Government is of the opinion that the proceedings to which the Court's attention has already been called, are sufficient to show that there was no unfairness on the part of the Immigration officials, and that the defendant was accorded every right to which he was entitled. The mere fact that the defendant did not request an attorney is sufficient to show that he was not desirous of refuting any of the evidence introduced by the Immigration officials, and inasmuch as the testimony shows so conclusively

that the defendant was engaged in the laundry business, when as a matter of fact he pretended to be a merchant, the order of the Secretary of Labor and the rule of the lower court should not be disturbed.

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